

**RECEIVED**

**JUN 13 2000**

**HABITAT PROGRAM**

June 9, 2000

OFFICE OF THE DIRECTOR  
JUN 12 2000

Mr. Allen J. Fiksdal  
Manager  
Energy Facility Site Evaluation Council  
925 Plum Street SE, Bldg. 4  
P.O. Box 43172  
Olympia, WA 98504-3172

Re: Fully Executed Settlement Agreement; Chehalis Generating Facility

Dear Allen:

Enclosed for filing in the Chehalis Power matter is the fully executed Settlement Agreement among Washington Department of Ecology, Washington Department of Fish and Wildlife and Chehalis Power. A copy of this Agreement was admitted during the adjudication as Exhibit 3.

Very truly yours,

PRESTON GATES & ELLIS LLP

By   
Elizabeth Thomas

ET:jr  
Enclosure  
Cc: Parties of Record

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SETTLEMENT AGREEMENT  
AMONG WASHINGTON DEPARTMENT OF ECOLOGY,  
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE  
AND CHEHALIS POWER

OFFICE OF THE DIRECTOR  
JUN 12 2000

**I. Parties**

- A. Chehalis Power Generating Limited Partnership ("Chehalis Power") seeks an amendment to its Site Certification Agreement ("SCA") from the Energy Facility Site Evaluation Council ("EFSEC" or "Council"). Chehalis Power, Inc. is the general partner of Chehalis Power.
- B. The Washington State Department of Ecology ("Ecology") has a mandate to protect and manage air, water, and other resources in the State of Washington. Ecology is a party to the EFSEC adjudicative proceeding that addresses Chehalis Power's requested SCA amendment.
- C. The Washington Department of Fish and Wildlife ("WDFW") has a mandate to protect and manage fishery resources in the State of Washington. WDFW is a party to the EFSEC adjudicative proceeding that addresses Chehalis Power's requested SCA amendment.

**II. Purpose and Intent**

Chehalis Power, Ecology, and WDFW (collectively, the "Parties") have been involved in discussions and negotiations regarding the potential impacts of the proposed SCA amendments upon water availability, reclamation of wastewater from the City of Chehalis' wastewater treatment plant, wastewater treatment capacity, water use minimization and air quality issues. Through this Settlement Agreement, the Parties set forth certain obligations and restrictions that the Parties intend to have incorporated into the SCA as conditions for the Chehalis Generation Facility ("CGF"), should EFSEC recommend that Chehalis Power's amendment application be granted. In exchange for Chehalis Power's consent to these conditions in its SCA and Chehalis Power's compliance with the conditions, the Parties agree to withdraw the issues identified below, to refrain from offering evidence on these issues, to refrain from expressing opposition to or disapproval of the amendment application, and to support this Agreement before the Council.

### III. Agreement

In exchange for the mutual promises set forth below, the Parties stipulate as follows:

#### Part 1: Stipulated Language for SCA

The Parties agree that Article VI Section A (Project Operation – Water Use) shall be revised to read as follows (blacklining reflects changes from the current SCA):

1. EFSEC hereby recognizes the City of Chehalis' surface water withdrawal permit No. 11303 to divert 15 cubic feet per second (cfs) from the Chehalis River. The City's Chehalis River water withdrawal permit does not allow withdrawal of water if the instream flow is below 50 cfs. No withdrawal rights from the Chehalis River or any other state surface water or ground waters are granted by this agreement. ~~The CGF's use of reclaimed water shall not exceed 4.6 cfs.~~
2. Chehalis Power shall use ~~reclaimed~~ municipal supply water from the City of Chehalis to meet its needs for process makeup and cooling ~~potable~~ water. ~~Chehalis Power shall purchase untreated municipal water from the City of Chehalis to meet its needs for process and cooling water only from November through April and only when reclaimed water from the City of Chehalis is insufficient to meet such needs or when operational conditions at the CGF temporarily preclude the use of reclaimed water.~~ Chehalis Power shall take all practicable steps to minimize its use of ~~untreated~~ municipal supply water. ~~Chehalis Power shall meet all applicable Water Reclamation and Reuse Standards developed by the state of Washington. Chehalis Power shall treat all effluent generated by the City from May through October, regardless of whether the facility is generating power.~~
3. To protect against potential impacts on the Chehalis River from the use of municipal supply water during low flow periods (defined as flow below 165 cfs, as measured at Grand Mound), prior to commencement of commercial operation of the CGF Chehalis Power shall do the following:
  - a. Prior to commencement of commercial operation of the ~~CGF first unit~~, Chehalis Power shall use its best efforts to acquire surface and/or ground of surface-water rights of 50-80 acre feet at the rate of up to \$2,000 per acre foot. Chehalis Power shall report to Ecology and the Council quarterly on its efforts to acquire these rights, until such time as 80 acre feet are acquired, or until December 31, 2001.
  - b. ~~As additional mitigation for operation of the first unit, Chehalis Power shall acquire up to 103 acre feet of additional surface water rights to meet its expected use of municipal water during low flow periods within the first year of operation.~~

- ~~e. As additional mitigation for operation of the second unit, Chehalis Power shall acquire up to 374 acre feet of surface water rights to meet its expected use of municipal water during low flow periods within the first year of operation.~~
- b. In the event that Chehalis Power is unable to acquire, despite its best efforts, the 80 acre feet of surface and/or ground water rights as described herein by December 31, 2001, Chehalis Power shall deliver on a one-time basis a sum equal to the product of \$4,000 and the number of acre feet of water below 80 acre feet that could not be acquired by Chehalis Power. Such sum shall be delivered in trust to the Chehalis Basin Partnership, or to some other organization agreed upon by Chehalis Power, Ecology and the Council for purposes of improving instream flows or flow-related conditions in the Centralia Reach. The organization conducting this work shall report semi-annually to Chehalis Power, Ecology and the Council on the status of its activities, until all the funds contributed by Chehalis Power are expended.
4. Water rights to be acquired by Chehalis Power pursuant to subparagraph 3. a shall: (a) be dedicated to the Chehalis River by retirement or other mechanism mutually agreed upon (after notice to Ecology) by Chehalis Power and the Council-Ecology; (b) to the extent practicable be upstream from the point of the City of Chehalis' Chehalis River pump station; (c) be in beneficial use; and (d) have priority dates earlier than April 9, 1976. Chehalis Power shall submit to Ecology and the Council information proof indicating that all water rights proposed to be acquired are in beneficial use. The Council will promptly review and determine if water rights proposed to be acquired pursuant to subparagraph 3. a by Chehalis Power are consistent with the requirements of this subparagraph 45. Chehalis Power shall submit information on its proposed water rights acquisitions to Ecology and EFSEC at least 30 calendar days prior to the date requested for EFSEC action. Failure of Ecology to respond within this period constitutes waiver of any potential objection. Chehalis Power shall not commence commercial operation of the CGF until EFSEC determines that Chehalis Power has satisfied the obligations imposed by this subparagraph or subparagraph 3. b. The Parties contemplate, however, that subsequent to EFSEC's determination, Chehalis Power and/or the holder(s) of the water rights to be acquired shall submit an application to Ecology for transfer of the rights to the water right trust program or for approval of a transaction with a similar objective. Ecology shall have sole authority to process such applications. [sic] Chehalis Power shall consult with the City of Chehalis, Ecology, U.S. Geological Survey, and Council staff in order to determine the means by which the portion of the Chehalis River known as the Chehalis [sic] Reach can best be gauged to measure and record flow rates. The Applicant shall report to the Council the result of the consultation within six months after the execution of the Site Certification Agreement. The Council may then take whatever action it deems

~~appropriate to require Chehalis Power to provide funds for the construction and operation of a flow gauge.~~

~~5. [No paragraph 5 in original]~~

~~6. Chehalis Power shall explore mitigation measures including the use of additional sources of reclaimed water and water use minimization technologies. The Council will revisit the water supply situation three years from the date of Certification, or nine months prior to commencement of plant construction which ever comes first.~~

5. Chehalis Power shall pay Ecology \$16,000 to cover Ecology's costs of performing its obligations under this Agreement. Such payment shall be made on or before the date that Chehalis Power submits its first request for a determination by EFSEC pursuant to subparagraph 4.

6. To minimize the impact of the CGF on the Chehalis River:

(a) During low flow periods (as defined in subparagraph 3) Chehalis Power shall not purchase municipal supply water from the City unless and to the same extent that Chehalis Power makes municipal supply water available through funding conservation on the City's municipal water supply system, with 15 days advance notice to Ecology and approval by the Council.

(b) Chehalis Power shall not purchase municipal supply water from the City in an amount to exceed 70 million gallons per year.

(c) From May 1 to October 31 annually, Chehalis Power shall not purchase municipal supply water from the City at a rate in excess of 850,000 gallons per day for any period of more than seven consecutive days.

(d) From May 1 to October 31 annually, Chehalis Power shall not use fuel oil for firing unless such use is conducted in a manner that draws no more than 110,000 gallons per day of municipal water from the City, or unless then available supplies of natural gas to the CGF are interrupted due to a declaration of force majeure by one or more of the gas suppliers and/or gas pipeline companies serving the CGF.

7. Chehalis Power may construct water storage facilities of sufficient capacity to meet its need for water during low flow periods. Chehalis Power shall submit its plans for these water storage facilities to the Council for its review as part of the design documents required pursuant to Article V, B-1 (Plans and Specifications).

The Parties agree that Article VI Section B (Project Operation – Water Discharge) shall be revised to read as follows (blacklining reflects changes from the current SCA):

1. All discharges by Chehalis Power to state waters shall be subject to the terms and conditions of this Agreement and, including the NPDES State Waste Discharge Permit (Attachment 43), and the interim effluent limitations and compliance schedule issued by the Council the pretreatment discharge requirements to be imposed by EPA.
- ~~2. Chehalis Power shall properly operate and maintain in good working order, all water handling facilities under its control, including the cooling towers, the circulating water, and process water facilities.~~
32. Chehalis Power and its contractors shall dispose of sanitary waste in accordance with applicable local and state requirements.
3. Any use of chemicals such as ~~bioicides, anti-corrosion inhibitors, or any such additives to the cooling water system, or any other system of~~ by the CGF which may result in any waste water discharge, shall be in conformance with applicable regulatory standards consistent with the NPDES Permit and the interim effluent limitations and compliance schedule issued by the Council.
4. Ecology agrees to use its best efforts to work with Chehalis Power and EPA on the prompt review, processing and decisionmaking by EPA of the pretreatment discharge permit application for the CGF.

The Parties agree that portions of the PSD permit (No. EFSEC/95-02 Amendment 1 Notice of Construction and Prevention of Significant Deterioration Draft Approval) shall be revised as shown on the attachment to this Agreement.

The Parties agree that Chehalis Power shall provide \$5,000 to the non-profit organization to be agreed upon by Chehalis Power and Ecology for purposes of addressing issues relating to CO<sub>2</sub> and/or global warming.

## **Part 2: Withdrawal of Issues**

The Parties shall withdraw the following issues from the list of issues to be addressed at the evidentiary hearing on Chehalis Power's amendment application. The issue numbers correlate to Consolidated Issue List No. 1, and they include all subparts.

Issue No. 11 (mitigation relating to air and water cooling) (Ecology)

Issue No. 12 (water use mitigation requirements) (Ecology)

Issue No. 13 (construction of wastewater treatment facility) (Ecology)

Issue No. 14 (pretreatment discharge permit) (Ecology)

Issue No. 15 (PSD permit revisions) (Ecology)

Issue No. 10 (impact of the project on the Chehalis River) (WDFW)


### Part 3: Support for Settlement

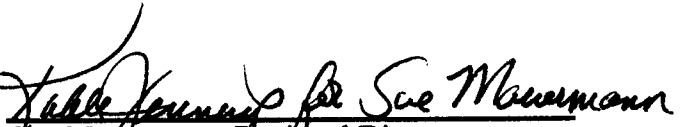
The Parties shall offer testimony in support of this settlement in EFSEC's adjudicative proceeding on Chehalis Power's proposed SCA amendment. The Parties shall use their best efforts to assist Chehalis Power in convincing the Council that the SCA language set forth above should be adopted as a resolution of all issues raised by the Parties in this proceeding.


### Part 4: Severability


If the Governor remands any portion or element of the SCA amendment after recommendation by the Council for approval, those portions of the SCA amendment that have not been remanded shall survive. The Parties agree to negotiate promptly, diligently and in good faith to replace such remanded portions or elements with language that supports, to the maximum extent possible, the purposes and intent of this Agreement as a whole.

DATED this 24 day of May, 2000.

  
Paul J. Margaritis, Vice President  
Chehalis Power, Inc.

  
Sue Manermann, Regional Director  
Washington State Department of Ecology

  
Elizabeth Thomas and Thomas Eli Backer  
Preston Gates & Ellis LLP  
Attorneys for Chehalis Power

  
Mary Sue Wilson  
Assistant Attorney General  
Attorneys for Ecology



**William C. Brooks C.P.M.**  
**Contracts Officer**

Washington Department of Fish & Wildlife



**William C. Frymire**  
**Assistant Attorney General**  
**Attorneys for WDFW**



## **[PROPOSED] REVISIONS TO PSD PERMIT**

(changes blacklined)

### **Approval Conditions**

2. NO<sub>x</sub> emissions from each HRSG exhaust stack shall not exceed 9.9 parts per million on a volumetric basis (ppmv) over a one hour average when corrected to 15.0 percent oxygen when burning natural gas. Chehalis Power agrees that it will not seek any revision of this 9.9 ppmv limit. NO<sub>x</sub> emissions from each HRSG exhaust stack shall not exceed 751 kilograms (1,656 pounds) per day when burning natural gas.

NO<sub>x</sub> emissions from each boiler shall not exceed 30.2 ppm<sub>dv</sub> over a one hour average corrected to 3.0 percent oxygen or 4.72 kilograms (10.4 pounds) per hour when burning natural gas.

NO<sub>x</sub> emissions from each HRSG exhaust stack shall not exceed 42.0 ppmv over a one hour average, corrected to 15.0 percent oxygen, when burning oil. NO<sub>x</sub> emission from each combustion turbine exhaust shall not exceed 4,068 kilograms (8,969 pounds) per day when burning oil.

NO<sub>x</sub> emissions from each boiler shall not exceed 70.0 ppm<sub>dv</sub> over a one hour average, corrected to 3.0 percent oxygen or 11.4 kilograms (25 pounds) per hour when burning oil.

The total annual NO<sub>x</sub> emissions of all combustion turbines and boilers shall not exceed 795 tons on a 12 month rolling summation, calculated once per month.

Initial compliance for each turbine shall be determined in accordance with Title 40 CFR Subpart GG and EPA Reference Method 20, except that the instrument span shall be 100 ppm or less. Initial compliance for each boiler shall be determined in accordance with Title 40 CFR Subpart Db and EPA Reference Method 7.

NO<sub>x</sub>, O<sub>2</sub> emissions and exhaust gas flow rate or velocity from each exhaust stack shall be measured and recorded by a continuous emission monitoring system (CEMS) which meets the requirements of Condition 13.2. Such CEMS shall be used to determine compliance with this Condition.

9. All conditions apply except during unit startup and shutdowns. The duration of startup or shutdown periods are limited to 3 hours per occurrence, with a maximum of two startups per 24 hour period, and 200 startups per year, per turbine or boiler. CO emissions during startup and shutdown shall not exceed 120 kilograms (263 pounds) per hour when burning gas, or 190 kilograms (417 pounds) per hour when burning oil, averaged over the occurrence. NOx emissions during startup and shutdown shall not exceed \* kilograms ( \* pounds) per hour when burning gas, or \* kilograms ( \* pounds) per hour when burning oil, averaged over the occurrence. Also, at least one turbine must be down when both boilers are operating under load conditions.

\*Short-term mass emission limits for Nox will be set based on modeled emissions data provided by Chehalis Power to EFSEC's permit writer.

TEB\cleansettlementtwoCFE 5/24/00 2:24 PM



cc: David M. ...

STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL  
PO Box 43172 • Olympia, Washington 98504-3172

March 12, 1997

**TO:** Interested Parties - Application 94-2, Chehalis Generation Facility  
**FROM:** Joleen Karl, EFSEC Staff *Joleen*  
**SUBJECT:** Site Certification Agreement for the Chehalis Generation Facility

Enclosed is the executed Site Certification Agreement (SCA) for the Chehalis Generation Facility. The attachments to the SCA will be sent to you at a later date. If you have any questions regarding this matter, please call Jason Zeller at (360) 956-2047.

Attachment



**Site Certification Agreement  
Between  
The State of Washington  
and  
CHEHALIS POWER GENERATING, L.P.**

**for the  
Chehalis Generation Facility  
Located in:  
Chehalis, Washington  
Lewis County, Washington**

**Executed March 4, 1997**

**ENERGY FACILITY SITE EVALUATION COUNCIL**

**Olympia, Washington**

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#### ATTACHMENTS

1. Site Legal Description
2. Water Pipelines Legal Description
3. Approval of Notice of Construction and Prevention of Significant Deterioration Application
4. Approval of National Pollutant Discharge Elimination System Application
5. Excavation and Erosion Control Measures
6. Mitigation Measures and Project Conditions
7. Settlement Agreement between Washington State Energy Office and Chehalis Power
8. Stipulations with Critical Issues Council
9. Interim Effluent Limitations and Compliance Schedule

**SITE CERTIFICATION AGREEMENT  
FOR THE CHEHALIS GENERATION FACILITY**

between

**THE STATE OF WASHINGTON**

and

**CHEHALIS POWER GENERATING, L.P.**

This Site Certification Agreement is made pursuant to Chapter 80.50 of the Revised Code of Washington (RCW) by and between the State of Washington, acting by and through the Governor of the State, and Chehalis Power Generating, L.P. (Chehalis Power).

Chehalis Power filed, as required by law, an application with the Energy Facility Site Evaluation Council (EFSEC or Council) for site certification for the construction and operation of a natural gas-fired electric generation facility in Lewis County. The Council reviewed the application, conducted public and adjudicative hearings, and by order, recommends approval of the application by the Governor.

The parties hereby now desire to set forth all terms, conditions, and covenants relating to such site certification in this Agreement pursuant to RCW 80.50.100(1).

The effective date of this Agreement shall be March 4, 1997

## ARTICLE I

### Definitions

Where used in this Site Certification Agreement the following terms shall have the meaning set forth below:

1. "Application" means the application for Site Certification, designated No. 94-2, filed by Chehalis Power with EFSEC for the Chehalis Generation Facility (CGF), and incorporated by reference herein, including all revisions to the Application.
2. "Approval" (by EFSEC) means an affirmative action by EFSEC regarding documents, plans, designs, programs, or other similar requirements submitted pursuant to this Agreement. Approval shall include affirmative actions of EFSEC or its authorized agents.
3. "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting the CGF with existing energy supply, processing, or distribution systems, including, but not limited to, the natural gas fuel line from the CGF metering point to the turbines, the backup diesel fuel storage tanks, diesel pipelines, the electrical power lines connecting the CGF to existing Bonneville Power Administration electrical transmission lines, and a water delivery and return system (which includes pipelines for reclaimed water, municipal water, and wastewater). The project does not include a natural gas delivery system, other than those elements located on the generating facility site.
4. "CGF" means the Chehalis Generation Facility and its associated facilities. The Chehalis Generation Facility consists of two natural gas fired combined cycle combustion turbine units with heat recovery steam generators. The specific components of the CGF are identified below in Article IV. The CGF will deliver electricity for sale to Bonneville Power Administration or other power purchasers.
5. "Chehalis Power" means Chehalis Power Generating, Limited Partnership (Chehalis Power), the project sponsor, or its successor.
6. "Chehalis Power, Inc. (CPI)" means the Delaware corporation formed to act as the sole general partner of the Chehalis Power Generating, Limited Partnership. CPI will manage all of the affairs of the partnership, and will exercise the rights and perform the obligations under this SCA. CPI shall be the guarantor of the CGF's performance and ability to perform these obligations.



7. "City" means the City of Chehalis, Washington.
8. "Combustion turbine" means a natural gas- or fuel oil- turbine configured to drive an electric generator.
9. "Commencement of construction" means the initiation or beginning of any actual construction activities such as form work, rebar, and pouring concrete for the power block structures.
10. "Ecology" means the Washington Department of Ecology.
11. "EFSEC" or "Council" means the State of Washington Energy Facility Site Evaluation Council created by Chapter 80.50 RCW, or such other agency or agencies of the State of Washington as may hereafter succeed to the powers of EFSEC for the purpose of this Agreement.
12. "Pipeline" means the water supply and return system element of "Associated facilities" except where the context clearly indicates otherwise.
13. "Site" means the property identified below in Article II.A, located in Lewis County, Washington, on which the CGF is to be constructed and operated.
14. "Site Certification Agreement (SCA)", also termed "Agreement", means this formal written agreement between Chehalis Power Generating, Limited Partnership and the State of Washington, which governs the construction and operation of the CGF, including all attachments hereto and exhibits, modifications, amendments, and documents incorporated herein.
15. "Site preparation" means grading, excavation, and preparation of lay down areas.
16. "Sponsor" means Chehalis Power Generating, Limited Partnership (Chehalis Power) or its successor
17. "WDFW" means the Washington Department of Fish and Wildlife.
18. "Wetland" means a wetland as determined by the United States Natural Resource Conservation Service for the generating facility site and a wetland as determined by United States Army Corps of Engineers for the Pipeline route.

## ARTICLE II

### Site Certification

#### A. Site and Pipeline Route Description

The Site on which the CGF is to be constructed and operated is located in Lewis County, Washington, south of the City of Chehalis, east of Interstate 5, and is more particularly described in Attachment 1. The route of the water supply and return pipelines connecting the CGF to certain City water and wastewater facilities is described with particularity in Attachment 2.

#### B. Site Certification

The State of Washington hereby authorizes the Chehalis Power to construct and operate the Chehalis Generation Facility (CGF) at the Site subject to the terms and conditions of the Council's Final Order, Findings of Fact and Conclusions of Law, commitments made during the adjudicative hearing, and this Site Certification Agreement. Such construction and operation shall be located within the areas designated for construction that are indicated in the Application, and described in Attachments 1 and 2.

This Site Certification Agreement authorizes construction of either or both units of the CGF to begin within ten (10) years from the date of signing of this Agreement. Construction may begin separately or simultaneously for each unit within that 10-year period. Construction is deemed to begin upon the start of construction of a unit's major components, excluding site preparation, upon a schedule and with the intention of completing construction within eighteen months after commencement. If construction of either unit's major components has not commenced within ten (10) years of the signing of this Agreement-rights under this Agreement to construct and operate the combustion turbine unit that has not commenced construction shall cease.

Six months before commencement of construction, Chehalis Power (a) during the first five years after execution of this Site Certification Agreement shall identify to the Council any substantial relevant change or certify the lack of substantial change in relevant environmental conditions, regulatory environment, or economically available technology, and (b) during the second five years shall certify that the representations of the application, environmental conditions, pertinent technology, and regulatory conditions remain current, or identify any changes and propose appropriate resulting changes in the Site Certification Agreement to deal with changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effect of any necessary or appropriate changes.

Not less than six months prior to commencement of construction of each generating unit of the combustion turbine project, Chehalis Power must provide EFSEC with evidence that it has satisfied its obligations under Attachment 7 of this Site Certification Agreement.

### ARTICLE III

#### General Conditions

##### A. Legal Relationship

1. This Agreement is made in lieu of any permit, certificate, or similar document required by any department, agency, division, bureau, commission or board of this state, or its political subdivisions for construction and operation of the CGF.
2. Chehalis Power shall comply with all applicable federal laws and regulations and with the terms and conditions of any permits and licenses which may be issued to Chehalis Power for the CGF by appropriate federal agencies.
3. This Agreement shall bind Chehalis Power, its subsidiary corporations, affiliated partnerships, contractors, subcontractors, and their successors in interest, and the state and any of its departments, agencies, divisions, bureaus, commissions, boards, or its political subdivisions, subject to all the terms and conditions set forth herein, as to the approval of the Site and Water Pipelines and the construction and operation of the CGF.
4. Chehalis Power shall pay to the Council reasonable and necessary monitoring costs during the construction and operation of the CGF to assure compliance with the conditions of this Agreement as required by Chapter 80.50 RCW. The amount and manner of payment shall be prescribed by EFSEC pursuant to applicable rules and procedures.
5. This Agreement, together with those commitments made by Chehalis Power in the Application, constitutes the whole and complete Agreement between the State of Washington and Chehalis Power and supersedes any other negotiations, representations, or agreements, either written or oral. *Provided*, that any representations and/or commitments made of or on behalf of Chehalis Power in the application and on the record during the adjudicative proceeding, are incorporated herein by this reference and made a part hereof as though set forth herein.

**B. Enforcement**

1. This Agreement may be enforced by resort to all remedies available at law or in equity.
2. This Agreement may be modified, suspended, or revoked pursuant to Chapter 34.05 RCW and Chapter 80.50 RCW, for failure by Chehalis Power to comply with the terms and conditions of this Agreement, for violations of Chapter 80.50 RCW, regulations issued thereunder and any other applicable laws or regulations, or for violation of any applicable resolutions or orders of EFSEC.

**C. Notices and Filings**

Filing of any documents or notice required by this Agreement with EFSEC shall be deemed to have been duly made after delivery to EFSEC's offices in Olympia, WA. Notices to be served on Chehalis Power shall be deemed to have been duly made when deposited in first class mail, postage prepaid, addressed to Chehalis Power.

**D. Rights of Inspection**

Chehalis Power shall provide access to the CGF site, all facilities therein, and all records associated with the construction and operation of the CGF, to designated representatives of EFSEC in the performance of their official duties.

**E. Site Certification Agreement Compliance Monitoring and Costs**

Chehalis Power shall pay to the Council such reasonable costs as are actually and necessarily incurred for monitoring and compliance activities during the construction and operation of the project as authorized in this Site Certification Agreement and as required in chapter 80.50 RCW. EFSEC shall prescribe the amount and manner of such payment subject to applicable rules and procedures.

**F. EFSEC Liaison**

Chehalis Power shall designate a person to act as a liaison between EFSEC and Chehalis Power.

**G. Changes in Project Management**

Chehalis Power shall notify EFSEC of any change in the management of, or responsibilities for, the CGF.

## **H. Amendment or Modification of Agreement**

1. This Agreement may be amended pursuant to EFSEC rules and procedures then in effect. Any requests for amendments to this Agreement shall be made in writing, by either EFSEC or Chehalis Power.
2. A change in ownership of the CGF shall require an amendment to this Agreement. An application for change of ownership shall provide an analysis of the effects of such change on the areas identified under Chapters 463-39 and 463-42 WAC and demonstrate that the successor is able and willing to comply with all terms and conditions of this Agreement.
3. In circumstances where the CGF causes a significant adverse impact on the environment not previously analyzed or mitigated by this Agreement or where such impacts are imminent, EFSEC may impose specific conditions or requirements on Chehalis Power as a consequence of such a situation, in addition to the terms and conditions of this Agreement. Such additional conditions or requirements shall be effective for not more than 90 days, and may be extended once for an additional 90 day period if deemed necessary by EFSEC.

## **I. Site Restoration**

Chehalis Power is responsible for site restoration pursuant to Council rules. At least six months prior to commencement of construction, Chehalis Power shall present to the Council its initial site restoration plan. Construction may not begin until the Council has approved a plan adequately providing for site restoration and for the funding of site restoration in the event of the Chehalis Generation Facility being terminated before it has completed its planned useful operating life. A detailed site restoration plan shall be submitted consistent with Council rules.

# **ARTICLE IV**

## **Project Description**

### **A. Combustion Turbines (CTs)**

The CGF consists of two natural gas-fired combined-cycle combustion turbine generator units. Each combustion turbine is expected to have a gross power rating of 159 MW at average annual ambient temperatures. The combustion turbine and an 80 MW steam turbine combine to drive a generator which will produce a nominal 230 MW per unit. The CT will be fired by natural gas, delivered at a pressure of 400 psig, as measured at the turbine fuel train. Natural gas will be fired in the turbine's combustion section using Advanced Dry Low NO<sub>x</sub> (ADLN) Combustors.

In the event that natural gas is unavailable, the CTs will burn low sulfur ( $\leq 0.5\%$ ) No. 2 diesel fuel. Use of low sulfur No. 2 diesel fuel will be limited to 720 hours per year for each combustion turbine and auxiliary boiler.

#### **B. Heat Recovery Steam Generators (HRSGs)**

The high temperature exhaust produced by each CT will flow directly to a HRSG. Nominal steam production from each HRSG is 525,000 pounds per hour. Each HRSG will be a triple pressure, natural circulation, drum type with horizontal gas flow.

Exhaust gases leaving the HRSG boiler will exit into a 150 foot tall (maximum) steel stack with Federal Aviation Agency (FAA) approved aircraft warning lights and/or obstruction markings. A stack damper may be provided to retain heat during shutdown. A continuous emission monitoring (CEM) system will be provided on the stack. The CEM system will measure constituents as required by the PSD permit.

#### **C. Steam Turbine**

High pressure steam produced by each HRSG will be collected in a manifold and directed to a condensing steam turbine rated to produce a nominal 80 MW. The steam turbine will be provided with a steam extraction system to supply steam for a future steam host.

#### **D. Fuel Supply**

The facility's primary fuel will be natural gas, with backup fuel oil. The natural gas will be delivered to a metering station on the eastern boundary of the site by an interstate regulated gas line, regulated by the Federal Energy Regulatory Commission (FERC). A fuel gas system will be provided on site to supply natural gas at suitable pressure and temperature to each combustion turbine, the auxiliary boiler(s), and any other miscellaneous uses, such as unit heaters.

Fuel oil will be a low sulfur ( $\leq 0.5\%$ ) No. 2 diesel fuel as backup fuel. This fuel will be delivered by truck and five (5) day full operation storage will be provided on site by two 1,600,000 gallon storage tanks.

#### **E. Water Supply System**

The CGF will use two sources of water supply: (1) reclaimed water from the City of Chehalis Wastewater Treatment Plant, comprised of effluent from the City of Chehalis that has been treated to approved standards for re-use and normally is discharged to the Chehalis River; and (2) from November through April only municipal water from the City of Chehalis, Chehalis River Water Pumping Station. Both sources of water will be obtained from the City of Chehalis pursuant to the City's existing water rights. Priority will be given to the use of reclaimed water.

Raw municipal water will only be used from November through April if sufficient reclaimed water is unavailable and will not be used from May through October. Potable water will be supplied through the City's municipal water supply system.

#### **F. Water Discharge System**

Sanitary sewer water from the CGF will be discharged to the City's municipal sewage collection system in the Industrial Park and will be treated at the Chehalis Wastewater Treatment Plant.

All process wastewater from the CGF will be discharged to the existing City of Chehalis' Wastewater Treatment Plant discharge line below the treatment plant. At this location, the CGF wastewater will join the City's wastewater for discharge to the Chehalis River through the City's existing outfall. The CGF will convey its wastewater discharge to the City's discharge line via a pipeline running parallel to the reclaimed water line that routes water to the CGF for supply purposes.

#### **G. Cooling System**

The circulating water system will provide cooling water to the Steam Turbine Condenser and to a heat exchanger serving the auxiliary (closed) cooling water system. The heated circulating water will be sent to the cooling towers where the temperature is reduced through evaporative cooling. The CGF will have two evaporative cooling towers, one for each unit. Air will be forced through the towers by mechanical inducement.

#### **H. Electrical Interconnection**

The facility will be interconnected to the Bonneville Power Administration's (BPA's) 500 kV transmission system through a new switchyard located at the CGF. The 500 kV switchyard will be connected into BPA's Paul-Allston 500 kV Line No. 1 through new transmission lines of approximately 1700 feet in length. See Section 2.2..4.1 of the Application for the legal description of the transmission line corridor.

#### **I. Aesthetics and Landscaping**

1. The CGF will be constructed in a manner that is aesthetically compatible with the adjacent area. Major exterior components of the CGF will be painted neutral and natural colors to minimize visual contrasts with the background.
2. All site areas not needed for CGF facilities, roadways, drainage or ponds will be planted with trees and shrubs, including native species to the maximum extent feasible, to provide visual buffering of the buildings and parking lot, and to provide feeding, foraging and nesting opportunities for wildlife species known to occur in the project vicinity. This

provision does not preclude the planting of lawn around CGF facilities. Landscaped areas will primarily be located on the south perimeter between the facility and Bishop Road, along the western perimeter south of the transmission lines, and on the eastern perimeter south of the cooling towers.

3. In the event of damage to or removal of vegetation along the water pipeline route resulting from construction by Chehalis Power, Chehalis Power agrees to return the area affected to previously existing topsoil condition and to restore native species. Restoration or replacement of vegetation from wetland areas along the route of the water pipeline is governed by Attachment 6.

## **ARTICLE V**

### **Project Construction**

#### **A. Construction Commencement and Reporting**

Thirty (30) days prior to commencement of construction, Chehalis Power shall submit an overall construction schedule. Construction progress reports shall be filed quarterly within thirty (30) days after the end of the quarter. Notices of significant changes in the construction schedule shall be filed with EFSEC within fifteen (15) days of the schedule change.

#### **B. Plans and Specifications**

1. Chehalis Power shall submit to EFSEC or its designated representative for approval those design documents that demonstrate compliance with Agreement conditions. The design documents will include, but are not limited to, conceptual design studies, flow diagrams, system descriptions, detailed design drawings, specifications, and vendor guarantees for equipment and processes as appropriate.
2. Chehalis Power shall design the proposed facility and water pipelines to comply with Seismic Zone 3 standards of the Uniform Building Code (UBC).
3. CGF buildings, structures, and pipelines shall be designed and constructed consistent with the requirements found in the Lewis County construction codes and Section 301(a) of the UBC. Buildings and structures are defined in the UBC Section 403 and 420. Work exempt from consistency requirements is defined in UBC Section 301(b), and as amended by Lewis County.



**C. Surface Runoff and Erosion Control**

1. During construction, Chehalis Power will require its contractors to employ all reasonable means necessary to meet standards set forth in this Agreement. Chehalis Power will set forth such conditions necessary thereto in its bidding documents, plans, and contracts which will be developed in consultation with the Council.
2. Chehalis Power will comply with provisions relating to excavation and erosion control described in Attachment 5 and will require all contractors to comply therewith.
3. Sedimentation, erosion control, dust control, and related construction plans pertaining to work on the site and on permanent and/or temporary roads must conform to requirements set forth in Attachments 5 and 6, or alternative plans submitted by Chehalis Power to and approved by the Council.
4. Chehalis Power will develop an erosion and sedimentation control plan, including a stormwater control plan for the construction phase, to be submitted to the Council six months before commencement of construction, and to consult with Ecology and WDFW during the preparation of such plan (Attachment 5).
5. In the event of unforeseen surface water runoff during construction, Chehalis Power to will comply with all pertinent industry standards for control of such runoff during construction. Chehalis Power further agrees to take such actions as are deemed necessary and reasonable by the Council to control said runoff. Chehalis Power will promptly notify the Council of the occurrence or likely occurrence of any surface water runoff problems.
6. Chehalis Power will take such steps as are necessary to assure that all construction activity will not result in a violation of applicable turbidity criteria in the State of Washington Water Quality Standards. The Council may, at its discretion, grant a temporary waiver of such standards upon request by Chehalis Power.

**D. Construction Inspection**

EFSEC shall contract with the Lewis County Public Services Department to provide construction inspection services for all CGF buildings, structures and pipelines to ensure consistency with the approved design and construction plans. Construction shall be in accordance with the approved design and construction plans, the UBC, and County building codes and regulations.

**E. As-built Drawings**

Chehalis Power agrees to maintain on file record drawings and to allow access to the Council or its designated representatives, on request following reasonable notice, to complete sets of as-built drawings.

**F. Construction Noise**

Chehalis Power and its contractors and subcontractors shall use industry standard noise attenuation controls during construction to mitigate noise impacts including mufflers on construction equipment and timing of construction activities to avoid Sundays, legal holidays, or the hours between 10 pm and 6 am.

**G. Construction Traffic**

In consultation with appropriate local and state agencies, Chehalis Power shall develop a plan to minimize any significant traffic impacts associated with construction of the CGF. Chehalis Power shall fund or provide those traffic control measures or devices along Bishop Road that are found necessary by EFSEC in accordance with said plan to mitigate such traffic impacts.

**H. Construction Phase Spill Prevention**

In order to prevent spills of petroleum products or toxic materials that could contaminate soil, ground water or surface waters during the construction phase, Chehalis Power shall submit a spill prevention and countermeasure program three (3) months prior to commencement of construction of the CGF. The program shall address oil/chemical storage, containment, site security and personnel training. The program shall also address measures that will be taken to control and contain discharge, cleanup actions, notification of appropriate agencies and a list of available cleanup materials.

**I. Construction Phase Spill Contingency Plan**

In order to minimize the environmental impact from any spill of petroleum products or toxic materials during the construction phase of the project, Chehalis Power shall have a spill contingency plan. This plan shall address measures that will be taken to control and contain discharge, cleanup actions, notification of appropriate agencies and a list of available cleanup contractors and oil cleanup materials.

## ARTICLE VI

### Project Operation

#### A: Water Use

1. EFSEC hereby recognizes the City of Chehalis' surface water withdrawal permit No. 11303 to divert 15 cubic feet per second (cfs) from the Chehalis River. The City's water withdrawal permit does not allow withdrawal of water if the instream flow is below 50 cfs. No withdrawal rights from the Chehalis River or any other state surface water or ground waters are granted by this agreement. The CGF's use of reclaimed water shall not exceed 4.6 cfs.
2. Chehalis Power shall use reclaimed water from the City of Chehalis to meet its needs for process and cooling water. Chehalis Power shall purchase untreated municipal water from the City of Chehalis to meet its needs for process and cooling water only from November through April and only when reclaimed water from the City of Chehalis is insufficient to meet such needs or when operational conditions at the CGF temporarily preclude the use of reclaimed water. Chehalis Power shall take all practicable steps to minimize its use of untreated municipal water. Chehalis Power shall meet all applicable Water Reclamation and Reuse Standards developed by the state of Washington. Chehalis Power shall treat all effluent generated by the City from May through October, regardless of whether the facility is generating power.
3. To protect against potential impacts on the Chehalis River from the use of municipal water during low flow periods (defined as flow below 165 cfs, as measured at Grand Mound), Chehalis Power shall do the following:
  - a. Prior to commercial operation of the first unit, Chehalis Power shall acquire surface water rights of 50 acre feet.
  - b. As additional mitigation for operation of the first unit, Chehalis Power shall acquire up to 103 acre feet of additional surface water rights to meet its expected use of municipal water during low flow periods within the first year of operation.
  - c. As additional mitigation for operation of the second unit, Chehalis Power shall acquire up to 374 acre feet of surface water rights to meet its expected use of municipal water during low flow periods within the first year of operation.
4. Water rights to be acquired by Chehalis Power shall: (a) be dedicated to the Chehalis River by retirement or other mechanism mutually agreed upon by Chehalis Power and Ecology, (b) be upstream from the point of the City of Chehalis' Chehalis River pump

station, (c) be in beneficial use, and; (d) have priority dates earlier than April 9, 1976. Chehalis Power shall submit to the Council proof that all water rights acquired are in beneficial use. The Council will review and determine if water rights acquired by Chehalis Power are consistent with the requirements of this paragraph.

5. Chehalis Power shall consult with the City of Chehalis, Ecology, U.S. Geological Survey, and Council staff in order to determine the means by which the portion of the Chehalis River known as the Chehalis Reach can best be gauged to measure and record flow rates. The Applicant shall report to the Council the result of the consultation within six months after the execution of the Site Certification Agreement. The Council may then take whatever action it deems appropriate to require Chehalis Power to provide funds for the construction and operation of a flow gauge.
6. Chehalis Power shall explore mitigation measures including the use of additional sources of reclaimed water and water use minimization technologies. The Council will revisit the water supply situation three years from the date of Certification, or nine months prior to commencement of plant construction which ever comes first.

**B. Water Discharge**

1. All discharges by Chehalis Power to state waters shall be subject to the terms and conditions of this Agreement, including the NPDES Permit (Attachment 4), and the interim effluent limitations and compliance schedule issued by the Council.
2. Chehalis Power shall properly operate and maintain in good working order, all water handling facilities under its control, including the cooling towers, the circulating water, and process water facilities.
3. Chehalis Power and its contractors shall dispose of sanitary waste in accordance with applicable local and state requirements.
4. Any use of chemicals such as biocides, anti-corrosion inhibitors, or any such additives to the cooling water system, or any other system of the CGF which may result in any waste water discharge, shall be consistent with the NPDES Permit and the interim effluent limitations and compliance schedule issued by the Council.

**C. Air Emissions**

1. Chehalis Power shall operate the CGF so that emissions to the atmosphere comply with the Approval of Notice of Construction and Prevention of Significant Deterioration (PSD) Application Conditions issued by the Council (Attachment 3).

2. Chehalis Power shall properly operate and maintain in good working order all air pollution control equipment and monitoring equipment required in Attachment 3.
3. Chehalis Power shall be subject to the time limitations for construction and renewal conditions set in the PSD permit (Attachment 3).
4. Chehalis Power shall report immediately to the Council whenever the air monitoring programs disclose of emergency conditions or conditions that might lead to a violations of the air emission permit as provided in Attachment 3.
5. Greenhouse Gases and Carbon Dioxide (CO<sub>2</sub>) Mitigation
  - a. Chehalis Power shall prepare a report prior to each of the two plants coming on line, that presents and evaluates possible greenhouse gas emissions and carbon dioxide mitigation techniques, and concentrates on those techniques that can offer cost-effective mitigation measures.
  - b. If a comprehensive federal or state mitigation program is implemented, the Council reserves the right to exercise its authority under that program, considering and appropriately crediting, if permitted by law, any measures that Chehalis Power has accomplished under that Order.

**D. Vegetation, Fish and Animal Life**

Mitigation measures for vegetation, fish and animal life are set forth in Attachment 6.

**E. Lighting**

Outdoor or directional lighting will be limited and lighting angles will be adjusted to minimize glare impacts, or supplemental light shields and/or vegetation will be used for extra screening in those areas where glare or light spillover would be obtrusive to nearby residents or to users of Bishop Road.

**ARTICLE VII**

**Public and Environmental Protection**

**A. Safety and Security**

1. The safety of construction and operating personnel is required by regulations promulgated under the Federal Occupational Safety and Health Act (OSHA) and the Washington Industrial Safety and Health Act (WISHA). Chehalis Power shall comply with applicable

federal and state safety regulations and local and industrial codes and standards (such as the Uniform Fire Code or those standards administered by the National Boiler Board and Pressure Vessel Inspectors). Chehalis Power, its general contractor, and all subcontractors, shall make every reasonable effort to maximize safety for individuals working at the CGF.

2. The CGF site perimeter will be enclosed with a chain link fence and will have two (2) ingress and egress gates at completion of site preparation.
3. During construction, the gates will be staffed 24-hours-per-day or locked. Parking for construction contractor employees will be in an assigned parking area outside of the fenced area. Access to the CGF site by all personnel will be through the staffed security gate. All construction and delivery vehicles will be logged in and out by the gate security person.
4. During operation, the CGF will retain the perimeter fencing and access gates used during construction, or will provide similar security measures. A security person will monitor the site entry gate at least 8-hours-per-day Monday through Friday during normal business hours. During off hours, holidays and weekends, the access gate will be monitored by on-site personnel from the CGF Control Room using closed circuit television and voice intercom recorders.
5. Visitors shall be provided with safety equipment where and when appropriate.

#### **B. Emergency Plan**

Chehalis Power will establish an emergency response plan for the CGF to provide employee safety in the event of the following emergencies: on-site chemical release, flood, medical emergency, major power loss, fire, extreme weather, earthquake, volcano, and bomb threat no later than three (3) months prior to operation of the combustion turbines. In preparing the plan, Chehalis Power agrees to:

1. Coordinate such plan with local, state and federal agencies directly involved in implementing such a plan.
2. Follow the requirements of WAC 296-24-567 and 296-62-3112 and 29 CFR 1910.38, Emergency Action Plan.
3. Include detailed provisions for public health and safety, emergency medical treatment, special emergency training programs and prevention of property damage.

4. Periodically provide the Council with updated lists of emergency personnel, communication channels and procedures.
5. All hourly and salaried employees, including administrative staff, contractors and visitors will be covered by the plan.

**C. On-site Fuel Pipelines**

The natural gas pipeline connecting the CGF with the delivery pipeline (from the metering station to the CGF) shall conform to all state safety standards for natural gas lines and all state and federal standards for construction of gas pipelines. The pipeline supplying the diesel fuel from onsite storage to the CTs shall be constructed in such a manner that it conforms to all applicable state and federal codes.

**D. Fire Protection**

After consultation with the appropriate Fire Marshall, Chehalis Power shall submit to EFSEC for approval all fire protection plans to be in force during construction and operation of the CGF.

**E. Explosions**

Gas release detectors shall be installed and set at the 20 percent lower explosion limit. In addition, Chehalis Power shall describe in the final design and plans and specifications those systems that are primary, secondary, or back-up systems.

**F. Dangerous or Hazardous Materials**

Chehalis Power shall handle, treat, store, and dispose of all dangerous or hazardous materials in accordance with state standards for hazardous and dangerous wastes, Chapter 463-40 WAC and Chapter 173-303 WAC.

**G. Spill Prevention, Control and Countermeasure Plan**

1. Chehalis Power shall prepare and submit for the Council's review and approval a Spill Prevention, Control and Countermeasure (SPCC) Plan approved by a professional Engineer that meets applicable requirements of 40 CFR 112 and that includes the amount and type of oil(s) and hazardous materials to be stored at the project site, patterns of usage, transfer procedures and other factors that will indicate the magnitude of spill potential.

2. As required, the SPCC plan shall also describe procedures for securing valves, type of gauges, dike size and design, site security, lighting, alarms, spill response materials and equipment, inspection procedures, personnel training, emergency procedures and spill notification requirements.
3. The SPCC plan shall also include location and topographic maps, accurate diagrams of the storage tank, dike(s), piping, valves, transfer pad and other significant components of the oil storage delivery system.
4. The SPCC plan shall be submitted to the Council and its designated representatives within one year of commencement of construction of the CGF, and shall be updated a minimum of every two years.
5. The bulk oil storage tanks shall be contained in a manner consistent with 40 CFR 112 and applicable state and local rules and regulations. The containment dikes will include a barrier that is sufficiently impervious to keep spilled oil from entering waters of the State following any failure of the primary containment. Design of the tank containment shall address stormwater management and shall be approved by a Professional Engineer.
6. Truck unloading facilities will include an unloading and spill collection area sized for four highway tanker trucks. The area surrounding the oil transfer pad will be adequately curbed and sealed to prevent entry of any spilled oil into the waters of the State. The approach selected shall be approved by a Professional Engineer.

#### **H. Air Emission Reporting**

Chehalis Power shall report immediately to the Council whenever the air monitoring programs disclose the existence of emergency conditions or conditions that reasonably could lead to a violation of the Prevention of Significant Deterioration (PSD) Permit (Attachment 3).

#### **I. Noise Monitoring**

After start-up, Chehalis Power shall conduct noise monitoring to verify model-predicted noise levels described in the Application, and shall provide additional mitigation measures such as noise silencers, sound absorbing materials, and noise barriers if necessary.



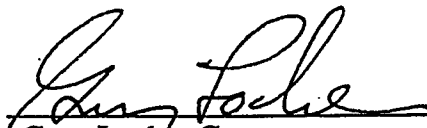
## ATTACHMENTS

Attached hereto and incorporated in this Agreement by this reference are the following:

1. Site Legal Description
2. Water Pipelines Legal Description
3. Approval of Notice of Construction and Prevention of Significant Deterioration Application
4. Approval of National Pollutant Discharge Elimination System Application
5. Excavation and Erosion Control Measures
6. Mitigation Measures and Project Conditions
7. Agreement with Washington State Energy Office
8. Stipulated Agreements with Critical Issues Council
9. Interim Effluent Limitations and Compliance Schedule

Dated and effective this 4th day of MARCH, 1997.

FOR THE STATE OF WASHINGTON

  
\_\_\_\_\_  
Gary Locke, Governor

FOR CHEHALIS POWER GENERATING, L.P.  
by its General Partner, CHEHALIS POWER, INC.

  
\_\_\_\_\_  
Paul J. Margaritis, Chehalis Power, Inc.



1 as proposed at the time of entry of this Agreement. The Agreement does not prevent Ecology from  
2 commenting at EFSEC proceedings outside the adjudicative hearing and post-hearing briefing.  
3 However, the Parties agree to support this Agreement's commitments and mitigation framework in all  
4 other proceedings related to the Project, and Ecology agrees not to seek additional mitigation in such  
5 proceedings.

### 6 III. RESOLUTION OF ISSUES

7 Chehalis Power has undertaken site impact assessments to identify the major impacts expected  
8 from construction and operation of the Project. The Parties agree that not all impacts may be known  
9 and therefore, this Agreement, and the Attachment hereto, contains commitments to address specific  
10 impacts that are currently expected as well as a commitment to principles of impact assessment and  
11 mitigation for potential future impacts that are currently unknown.

#### 12 A. Water.

- 13 (1) Chehalis Power shall use reclaimed water from the City of Chehalis to meet its needs  
14 for process and cooling water. Chehalis Power shall purchase untreated municipal  
15 water from the City of Chehalis to meet its needs for process and cooling water only  
16 when reclaimed water from the City of Chehalis is insufficient to meet such needs or  
17 when operational conditions at the CGF temporarily preclude the use of reclaimed  
18 water. Chehalis Power shall take all practicable steps to minimize its use of untreated  
19 municipal water.
- 20 (2) To protect against potential impacts on the Chehalis River from the use of municipal  
21 water during low flow periods (defined as flow below 165 cfs, as measured at Grand  
22 Mound), Chehalis Power shall do the following:
  - 23 (a) Prior to commercial operation of the first unit, Chehalis Power shall acquire  
24 surface water rights of 50 acre feet.
  - 25 (b) As additional mitigation for operation of the first unit, Chehalis Power shall  
26 acquire up to 103 acre feet of additional surface water rights to meet its  
expected use of municipal water during low flow periods.
  - (c) As additional mitigation for operation of the second unit, Chehalis Power shall  
acquire up to 374 acre feet of surface water rights to meet its expected use of  
municipal water during low flow periods.
- (3) Water rights acquired by Chehalis Power to meet the requirements of Section III.A.(2)  
shall: be dedicated to the Chehalis River by retirement or other mechanism mutually  
agreed upon by the Parties, be upstream from the point of the City of Chehalis'  
Chehalis River pump station, be in beneficial use, and have priority dates earlier than  
April 9, 1976. Ecology reserves the right to review and approve water rights acquired  
by Chehalis Power to ensure that said rights are consistent with the requirements of  
this Section III.A.(3). Ecology's approval shall not be unreasonably withheld.
- (4) To further mitigate the potential impact of the project on water resources, Chehalis  
Power shall contribute \$10,000 (1995 dollars, adjusted by the applicable CPI) to the  
Chehalis River Council (or to such other organization(s) mutually agreed upon by the

Parties) annually for a period of ten years. Upon the mutual agreement of the Parties, Chehalis Power may substitute materials or services for these funds. The primary purpose of such mitigation shall be to improve water resources in the Centralia Reach of the Chehalis River. Individual projects shall be subject to mutual review and approval by Chehalis Power and Ecology to ensure consistency with this purpose. Chehalis Power shall make the first of such annual payments upon beginning facility construction. Alternatively, Chehalis Power shall undertake a project or projects valued at \$100,000 (1995 dollars, adjusted by the applicable CPI), as mutually agreed upon by the Parties, and shall complete such project or projects within ten years of beginning facility construction, or on such other schedule as mutually agreed upon by the Parties.

- (5) EFSEC will issue the NPDES Permit for the Project and will hold a hearing to receive comments on the draft NPDES Permit. Ecology reserves its right to present comments on the draft NPDES Permit as issued by EFSEC, but agrees to withdraw water quality issues from the adjudicative hearing. To the extent authorized by law, Ecology agrees to support NPDES permit limits for ammonia and BOD5 from May to October for the Project that are no more stringent than those for Darigold, Inc. (No. WA-003747-8) and the City of Chehalis (No. WA-002-1105).

B. Air.

EFSEC will issue the PSD Permit for the Project and will hold a hearing to receive comments on the draft PSD Permit. Ecology and Chehalis Power reserve their right to present written comments on the draft PSD Permit as issued by EFSEC, but agree to withdraw air issues relating to the PSD permit from the adjudicative hearing.

Chehalis Power and Ecology currently disagree over whether a carbon monoxide (CO) catalyst should be required for the Project. Ecology currently believes that a CO catalyst is BACT for the facility. Chehalis Power takes the position that a CO catalyst should not be required to satisfy BACT requirements.

Ecology is willing to receive additional information from Chehalis Power regarding this issue. If sufficient information is presented, Ecology agrees that it will reconsider its position regarding the CO catalyst requirement.

Ecology and Chehalis Power expect that reconsideration of the BACT requirements would occur as part of the PSD permit renewal process, as part of a PSD permit modification that may occur upon selection of a turbine vendor, or at Chehalis Power's request. Ecology and Chehalis Power recognize that revisions of final permit conditions specifying BACT requirements would require modification by EFSEC of the PSD permit and compliance with any applicable public notice and comment requirements.

Despite Ecology's commitment to reconsider the CO catalyst issue in the future, Ecology and Chehalis Power agree that, until Ecology receives, considers, and is persuaded by such additional information and analysis from Chehalis Power, both Parties will support inclusion of the following requirements in the PSD permit to be issued by EFSEC:

- (1) that a CO catalyst be used at the facility; and

- 1 (2) that additional analysis pursuant to Chapter 173-460 WAC will be required before k  
2 sulfur oil may be used as backup fuel at the facility. If such analysis is provided and  
3 supports the conclusion that oil firing may be authorized, Ecology will support  
4 inclusion of emission limits for oil firing as part of the PSD permit.

5 C. Wetlands/Shorelands.

- 6 (1) Chehalis Power and the Washington Department of Fish and Wildlife (WDFW) have  
7 entered into a settlement agreement (WDFW Agreement) with regard to the Project  
8 (Attachment A). The WDFW Agreement contains detailed discussions of wetlands,  
9 including construction techniques and mitigation measures for both known and  
10 unknown impacts. The WDFW Agreement, in its entirety, is hereby incorporated into  
11 this Agreement. Where that Agreement requires Chehalis Power to consult with, give  
12 notice to or provide reports or plans to WDFW, Chehalis Power agrees that it will also  
13 consult with, give notice to or provide reports or plans to Ecology.
- 14 (2) The SCA shall ensure consistency with Washington's Shoreline Management program  
15 including the following laws:
- 16 (a) The Shoreline Management Act and the individual master programs of Lewis  
17 County and any affected communities therein;
  - 18 (b) The State Environmental Policy Act;
  - 19 (c) The Federal Water Pollution Control Act and the State Water Pollution  
20 Control Act;
  - 21 (d) The Federal Clean Air Act and the State Clean Air Act.
- 22 (3) Chehalis Power shall assure that measures are taken during construction and  
23 operations at the project site and pipeline route that will protect public health and  
24 safety from flood hazards. Such measures include minimizing impacts at stream  
25 crossings and other areas within the 100-year floodplain and floodway, as identified by  
26 Federal Emergency Management Agency maps, to provide for adequate conveyance of  
flood waters, including the assurance of no significant rise in base flood elevations.

19 D. Spill Management.

- 20 (1) Spill Prevention Control and Countermeasure (SPCC) Plan:

21 Chehalis Power will prepare an SPCC plan approved by a Professional Engineer that  
22 meets applicable requirements of 40 CFR 112 and that includes the amount and type  
23 of oil(s) to be stored at the project site, patterns of usage, transfer procedures and  
24 other factors, that will indicate the magnitude of spill potential. As required, the  
25 SPCC plan shall also describe procedures for securing valves, type of gauges, dike size  
26 and design, site security, lighting, alarms, spill response materials and equipment,  
inspection procedures, personnel training, emergency procedures and spill notification  
requirements. The SPCC plan shall also include location and topographic maps,  
accurate diagrams of the storage tank, dike(s), piping, valves, transfer pad and other  
significant components of the oil storage and delivery system.

1 (2) Tank Containment:

2 All bulk oil storage tanks shall be contained in a manner consistent with 40 CFR 112.  
3 Where containment is by a containment dike, a barrier shall be installed that is  
4 sufficiently impervious to keep spilled oil from entering waters of the state following  
5 any failure of the primary containment. Design of the tank containment shall address  
6 stormwater management and shall be approved by a Professional Engineer.

7 (3) Transfer/Loading Area:

8 If the oil transfer or loading area is located outside of the storage tank containment  
9 area, the area surrounding the oil transfer pad shall be adequately curbed and sealed to  
10 prevent entry of any spilled oil into waters of the state. In the alternative, Chehalis  
11 Power may raise the loading area with drainage directed into the diked tank storage  
12 area. The approach selected shall be approved by a Professional Engineer.

13 (4) Construction Phase Spill Prevention:

14 In order to prevent spills of petroleum products or toxic materials that could  
15 contaminate soil, ground water or surface waters during the construction phase,  
16 Chehalis Power shall have a spill prevention program in place. This program shall  
17 address oil/chemical storage, containment, site security and personnel training.

18 (5) Construction Phase Spill Contingency Plan:

19 In order to minimize the environmental impact from any spill of petroleum products or  
20 toxic materials during the construction phase of the project, Chehalis Power shall have  
21 a spill contingency plan. This plan shall address measures that will be taken to control  
22 and contain discharge, cleanup actions, notification of appropriate agencies and a list  
23 of available cleanup contractors and oil cleanup materials.

24 E. Other.

25 (1) State Environmental Policy Act (SEPA):

26 EFSEC has ruled that certain SEPA issues are excluded from the adjudicative hearing.  
Chehalis Power will not oppose an Ecology request that EFSEC refrain from issuing  
any proposed SCA until after the EFSEC SEPA review process is complete.

(2) Clean Water Act § 401 Certification:

Ecology will support any necessary § 401 certification required for the Project's water  
pipelines under the Clean Water Act if consistent with this Agreement and applicable  
law.

#### IV. WITHDRAWAL OF OBJECTIONS

Based on the above commitments made by Chehalis Power and the above restrictions agreed to by Chehalis Power, Ecology stipulates to the withdrawal, from the adjudicative hearing, of the issues identified as II.1, II.2, II.3, II.4, II.5, III.B.2, III.B.3, III.C.1, III.C.2, III.C.3, III.C.4, III.C.5, III.C.6, III.C.7, III.C.8, III.C.9, III.C.10, III.C.11, III.D.1, III.D.3, III.D.4, III.D.5, IV.1, IV.2, V.1, V.2, V.3, V.4, V.5, V.6, VI.1, VIII.1, VIII.2, X.1, XII.1 and the issues listed as numbers 12, 14, 17 and 47 under "Issues Tentatively Resolved By Stipulation" in Consolidated Issues List No. 3 filed with EFSEC and dated August 25, 1995, Ecology also stipulates to the withdrawal of the profiled testimony of all of its witnesses: Perry Lund, Ron Holcomb, Paul Pickett, Alan Butler, William Backous, Linton Wildrick, Gale Blomstrom, and Daniel Sokol. Chehalis Power agrees that these witnesses may be called at the adjudicative hearing by other parties. For the purpose of addressing Ecology's Upper Chehalis River Dry Season Total Maximum Daily Load Study and Upper Chehalis River Initial Watershed Assessment, Chehalis Power agrees that Ecology may present rebuttal testimony at the adjudicative hearing or make available to EFSEC a witness or witnesses. Chehalis Power stipulates to the withdrawal of those portions of its profiled rebuttal testimony that respond directly to testimony withdrawn by Ecology. Chehalis Power understands that the profiled testimony withdrawn by Ecology may be developed at the adjudicative hearing by other parties, however, Chehalis Power may object to the written testimony itself being offered into evidence.

Ecology specifically reserves the right to comment on or to appeal air, water and SEPA issues outside of the adjudicative EFSEC proceedings on the Project.

DATED this 15<sup>th</sup> day of September, 1995.

By Thomas Eli Backer  
Elizabeth Thomas, WBAE #11644  
Thomas Eli Backer, WBAE #17825  
PRESTON GATES & ELLIS  
Attorneys for Chehalis Power Generating  
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By Mary Sue Wilson  
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SETTLEMENT AGREEMENT BETWEEN CHEHALIS POWER  
AND THE WASHINGTON DEPARTMENT OF ECOLOGY - 6

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ATTACHMENT A

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 94-2

CHEHALIS POWER,  
Chehalis Generation Facility

FISH AND WILDLIFE RESOURCE  
MITIGATION AGREEMENT



# **CHEHALIS GENERATION FACILITY FISH AND WILDLIFE RESOURCES MITIGATION AGREEMENT**

## **I. INTRODUCTION**

### **A. PARTIES**

Chehalis Power Generating Limited Partnership (Chehalis Power) is seeking a Site Certification Agreement (SCA) from the Energy Facility Site Evaluation Council (EFSEC) to construct and operate the proposed Chehalis Generation Facility (Project).

Washington Department of Fish and Wildlife (WDFW) has a mandate to preserve, protect, manage, and perpetuate the state's fish and wildlife resources, including habitat. WDFW is a party to the site certification adjudication before EFSEC.

### **B. PURPOSE AND INTENT**

Chehalis Power and WDFW (collectively the Parties) have been involved in discussions and negotiations related to the Project's potential effect on fish and wildlife resources, including habitat. The Project is described in detail in the Application for Site Certification Agreement that Chehalis Power filed with EFSEC, as amended on June 12, 1995 (the Application). The Project generally consists of two natural gas fired combined cycle electrical generation units and associated facilities, including a water delivery and return system (which includes pipelines for reclaimed water, municipal water and wastewater), and a transmission line connection facility. The Project does not include a natural gas pipeline delivery system, other than those elements located on the generating facility site. Through this Agreement, WDFW and Chehalis Power set forth the obligations and restrictions that the Parties intend to have incorporated into the SCA as conditions for the Project should EFSEC recommend that the Project be certified. The obligations and restrictions set forth in this Agreement relate to the resources that will be affected by construction and operation of the Project, as proposed at the time of entry of this Agreement. The Agreement does not prevent WDFW from commenting at EFSEC proceedings outside the adjudicative hearing and post-hearing briefing. However, the parties agree to support this Agreement's commitments and mitigation framework in all other proceedings related to the Project, and WDFW agrees not to seek additional mitigation for the anticipated impacts of the Project, as proposed at the time of entry of this Agreement. Nothing in this Agreement shall limit the ability of any Party to implement provisions of state or federal laws or regulations protecting threatened or endangered species.

### **C. RESOLUTION OF ISSUES**

Chehalis Power has undertaken site impact assessments to identify the major impacts expected from construction and operation of the Project. The Parties agree that not all impacts may be known and therefore, this Agreement contains commitments to address specific impacts

that are currently expected as well as a commitment to principles of impact assessment and mitigation for potential future impacts that are currently unknown.

## II. CHEHALIS POWER'S COMMITMENTS

### A. GENERAL STATEMENT OF COMMITMENTS

Chehalis Power agrees to take the following actions as described more fully below: 1) develop a detailed construction management plan for the water pipelines and primary construction at the generating facility site; 2) develop a number of identified plans (erosion and sediment control, right-of-way management, etc.), which shall indirectly protect fish and wildlife resources; 3) provide mitigation pursuant to the specific terms or general formulas and methodologies provided herein; and 4) commit to principles of impact assessment and a formula for mitigation replacement for those impacts, if any, that are not identified until construction or operation, or that result from impacts that are unavoidable or not susceptible to restoration by other action.

The generating facility site has been and remains disturbed in its entirety by the cultivation of agricultural crops. Most of the route for the water pipelines lies within or adjacent to existing rights of way that have been and remain disturbed. Accordingly, the value of the habitat that will be affected by construction and operation of the Project is lower than it would have been if the habitat had never been disturbed. The commitments made by Chehalis Power in this Mitigation Agreement are intended to generally protect and improve habitat for fish and wildlife resources. For purposes of this Agreement, "wetland" means a wetland as determined by the United States Natural Resource Conservation Service for the generating facility site and a wetland as determined by United States Army Corps of Engineers for the pipeline route. Chehalis Power agrees not to cite this Agreement in discussions with the Corps and other agencies relating solely to the delineation of wetlands.

### B. CONSTRUCTION MANAGEMENT PLAN

Chehalis Power agrees to develop a detailed construction management plan, which shall encompass all phases of the construction of the water pipeline delivery system and the primary construction phases (excavation, filling or regrading) of the facility development. The construction plan shall be generally based on the mitigation measures contained in the following sections of the Application, which may be incorporated by EFSEC into the SCA as binding commitments: section 1.4 (Mitigation Measures); section 2.10 (Surface Water Runoff); section 2.14 (Construction Methodology); section 2.17 (Study Schedules); and section 3.4 (Plants and Animals). Chehalis Power intends that the mitigation measures to which it expressly commits in the Application should be made binding commitments in the SCA. Chehalis Power agrees that the special construction provisions set out in this Agreement shall be incorporated into the construction management plan and to the extent in conflict, shall supersede directions or commitments contained in the above listed application sections. This construction management plan will be completed six (6) months prior to the start of on site construction.

C. SPECIAL CONSTRUCTION PROVISIONS

1. General Construction Procedures

a. Chehalis Power shall provide an independent environmental monitor (EM) with "stop-work" authority that reports to EFSEC.

(1) The EM shall be under the supervision and employ of Chehalis Power and independent from any construction contractor party utilized. The EM shall report independently to EFSEC regarding the specific environmental protection criteria set out in this Agreement.

(2) Standard environmental monitoring criteria shall be developed for EFSEC, in consultation with WDFW, prior to initiation of Project construction.

(3) Chehalis Power shall identify EM "stop-work" implementation criteria for EFSEC, in consultation with WDFW.

(4) No excavation, filling or regrading work shall be performed at any time unless there is full, concurrent independent environmental monitoring.

(5) All Environmental Monitor reports are to be submitted to EFSEC at the same time that they are submitted to Chehalis Power's Project Engineer.

(6) EFSEC and WDFW are to be promptly notified by facsimile (fax) or in person of any emergency response or any work stoppage requested by the Environmental Monitor.

2. Wetland and Aquatic Standards

a. Timing

(1) All "out of the water" soil or streambed-disturbing activities associated with wetland or stream crossings shall occur during the dry portion of the year, typically late spring through early fall unless special local conditions require a different timing to avoid impacts, as approved by EFSEC in consultation with WDFW.

(2) Construction related activity within fifty feet of the bank of the Chehalis River shall be limited to the period of July 1 through September 30. This provision shall supersede any other or inconsistent dates provided in sections 1.4 and 3.4 of the Application.

b. Access, Staging, and Ancillary Areas

(1) All equipment crossing a water body must use a construction bridge. Culvert crossings are not allowed.

(2) All construction equipment bridges shall be designed to pass the maximum flow and be maintained to prevent flow restrictions during the period that the equipment bridge is in place.

(3) The only access roads, other than the construction right of way, that may be used in wetlands are those existing roads that can be used with no modification and no impact on the wetland.

(4) Locate all staging areas, additional spoil storage areas, and other additional work areas at least fifty feet away from the ordinary high water mark or wetland boundary, unless on an existing road or on an upland surface that was disturbed at least 30 days prior to start of construction. In no event shall vegetation be cleared between these areas and the water body or wetland. Limit size of these areas to minimum needed to construct the wetland or water body crossing.

(5) Refuel all construction equipment at least 100 feet from water bodies or wetland boundaries.

c. Spoil Pile Placement and Control

All spoil material from water body crossings must be placed in the right of way at least ten feet away from the ordinary high water line, or in additional spoil storage areas located as required in paragraph II.C.2.b.(4) of this Agreement. At a minimum, all spoil shall be contained within sediment filter devices.

d. General Construction Procedures

(1) Notify the Departments of Ecology and Fish and Wildlife at least 48 hours prior to beginning construction, excavation or regrading work below the ordinary high water line (OHWL) of any waterbody or wetland.

(2) In wetlands and riparian areas, limit the construction rights-of-way width to fifty feet or less.

(3) In wetlands and riparian areas, vegetation that must be removed shall be cut at ground level, leaving existing root systems intact. Limit pulling of tree stumps and grading activities to those that would directly interfere with trenching, pipe installation and backfill.

(4) If standing water or saturated soils are present, use low ground weight construction equipment and/or operated on prefabricated equipment mats. This provision shall supersede any conflicting provision in the Application

(5) Use trench plugs as necessary to prevent draining of wetlands and/or diversion of water into upland portions of the pipeline trench.

(6) Existing culverts that must be repaired or replaced as a result of the Project shall meet or exceed original engineered design criteria for the protection of fish resources.

e. Specific Stream and River Construction Procedures

All crossings of Dillenbaugh Creek (within the ordinary high water line) shall be performed by bore and jack or directional drilling. If those construction techniques are not feasible, the following specific conditions shall apply to the crossing:

(1) Removing or reconfiguration of stream channel elements within the Ordinary High Water Level (OHWL) of Dillenbaugh Creek shall be prohibited unless specifically defined in the Construction Plan or the Erosion and Sediment Control Plan. The pre-construction and post-construction final footprint of stream element configuration below the OHWL within the project site shall be shown on the plans submitted to EFSEC, in consultation with WDFW, for review before beginning construction, excavation or regrading work below the OHWL.

(2) An updated presence and relative abundance survey for Olympic mud minnows shall be required for hydrologically connected areas within 300 feet of the crossing, if construction begins more than two years after the SCA is issued or if state resource agencies identify new information regarding this species.

(3) Before dewatering any area within the high water level of Dillenbaugh Creek, all fish are to be safely removed and relocated upstream of the construction site. Release points and transfer personnel are to be determined by EFSEC, in consultation with WDFW. A fish transport record is to be maintained identifying fish species, numbers transported and any mortality related to such dewatering.

(4) Immediately after pipeline crossing, placement to a minimum depth of one (1) foot of clean, round spawning gravel must be done in all disturbed streambed areas.

(5) Rounded boulders and rock are to be utilized in the restoration of Dillenbaugh Creek; riprap rock is not permitted.

(6) Placement and securing of acceptable instream fish cover features at a maximum interval of ten (10) feet along disturbed banks must be done on both sides of the stream. Instream cover features shall be woody debris including root wads.

(7) Water quality and quantity monitoring shall be performed to Department of Ecology standards in connection with any stream crossings. Water sampling results for the locations described below shall be submitted to EFSEC and WDFW within 5 days of collection.

(8) Water quality and quantity monitoring shall be performed to adequately define any increase in ambient Dillenbaugh Creek turbidity. This cumulative impact monitoring shall continue until all crossing sites have stabilized and all erosion and sediment control features are demonstrated to be functioning as designed. As a minimum, ambient water quality monitoring shall be as measured 100 feet upstream of the limits of the crossing site and construction impact upon water quality shall be measured 100 feet downstream of the crossing site.

(9) Water turbidity measurements shall be taken in Dillenbaugh Creek, immediately above and below all crossing sites. Weather conditions, construction status, and flow conditions shall be defined to accurately reflect site conditions. Sampling shall be performed at least once every 24 hours to fully monitor excavation and reconfiguration of steep slopes adjacent to the Creek, precipitation and work within any stream channel below the OHWL.

f. Construction Testing

(1) Construction testing to determine piping system integrity shall be done following the Washington DOT standard construction specification - 1994 Chapter 7 "Pipe Installation for Water Mains" or latest version.

(2) Any hydrostatic test water removed from rivers or lakes shall be screened by a screen on the intake hose (1/8" mesh) to prevent entrainment of fish. The maximum approach velocity shall not exceed 0.4 feet/second.

(3) At least thirty days prior to use, Chehalis Power shall provide to EFSEC a list of specific locations proposed for withdrawal and discharge of hydrostatic test water and allow EFSEC to review and comment on the list in consultation with WDFW and Ecology.

(4) Chehalis Power shall notify those same agencies of intent to begin using specific sources for hydrostatic test waters at least 48 hours prior to testing.

(5) Chehalis Power shall control withdrawal for hydrostatic testing to maintain adequate flow rates at all times to protect aquatic life and provide for all other water body uses, including downstream withdrawals.

(6) Hydrostatic test manifolds shall be located outside wetlands and riparian areas.

(7) Chehalis Power shall regulate hydrostatic water discharge rates and use energy dissipation device(s) in order to prevent erosion of upland areas, stream bottom scour, suspension of sediments, or excessive stream flow.

3. Right-of-Way Maintenance Practices

a. The water pipeline is located primarily within existing county, city or state right-of-way. Right-of-Way maintenance procedures will continue to be governed by the agencies with ownership or utility easement rights.

b. Unless prohibited by the holder of the right-of-way or easement, vegetation will be allowed to regrow over the water pipeline.

c. Chehalis Power shall develop specific procedures to prevent, where possible, the invasion or spread of undesirable exotic vegetation along the pipeline right-of-way.

D. OTHER PLANS

1. Chehalis Power agrees to develop the following plans for submittal to EFSEC, and to consult with WDFW during the development and review of these plans:

a. Environmental Protection Control Plan/Construction Management Plan. In developing this Plan, Chehalis Power shall work with EFSEC, in consultation with WDFW, to ensure that construction activities are designed to minimize impacts to wetland habitat, consistent with this Agreement.

b. Erosion and sediment control plan, including stormwater control plan during construction.

c. Blasting plan.

d. Restoration of construction area plan, including restoration, revegetation and maintenance practices, schedules, monitoring methods, contingencies, and noxious weed control measures.

e. Construction water use and control plan.

f. Right-of-Way Management Plan.

g. A Fish and Wildlife Resource Survey, specifically updating the surveys for bald eagles, red legged frogs and other candidate and listed species may be required by EFSEC, in consultation with WDFW, if construction begins more than two years following the issuance of the SCA or if state resource agencies identify new information regarding these species.

2. In addition, WDFW shall be provided with the following plans, in accordance with standard EFSEC procedures:

a. Petroleum and toxic material handling, storage and spill response plan.

- b. Long-term stormwater control plan.

E. MITIGATION FOR EXPECTED UNAVOIDABLE IMPACTS

WDFW and the Chehalis Power agree that Chehalis Power will avoid and minimize impacts to fish and wildlife wherever possible. To the extent impacts to fish and wildlife habitat cannot be avoided in the construction and operation of the Project, the impacts will be mitigated as follows:

1. Generating Facility Site Wetlands

To mitigate for wetlands filled and lost, and for the loss of agricultural lands at the generating facility site, Chehalis Power shall do the following:

a. Enhance Stormwater Detention Areas

(1) The primary purpose of the stormwater detention areas is to collect stormwater on site to control water quality/quantity, and to prevent flooding and erosion on site and downstream of the site.

(2) To the extent that the functioning of the stormwater detention areas are not degraded from their primary purpose, features such as natural shoreline embankments, shore-edge vegetation, perching areas, and large woody debris will be added to enhance use of the detention areas by aquatic and wildlife species.

b. On Site Landscaping

All site areas not needed for Project facilities shall be planted with trees and shrubs, including native species to the maximum extent feasible, to provide feeding, foraging and nesting opportunities for wildlife species known to occur in the project vicinity. This provision does not preclude the planting of lawn around Project facilities.

2. Water Pipeline Corridor Wetlands and Uplands.

a. Chehalis Power has generally located its water pipelines in or along existing pipeline right-of-way corridors. Pipelines installation across Dillenbaugh Creek will be accomplished by directionally drilling or boring and jacking methods.

b. Monitoring of Restored or Replaced Vegetation: Chehalis Power shall revegetate areas disturbed by the water pipeline construction as set out in paragraphs II.E.2.e. and f. Chehalis Power shall monitor the success of wetland, riparian and upland revegetation annually and take corrective action to ensure success, with written reports to EFSEC and copies to WDFW and Ecology for the first five years after construction.



(1) Wetland and Riparian Vegetation: Revegetation of wetland and riparian areas that are currently vegetated with native species is considered successful (assuming no alterations by the underlying owner or utility easement holder) if the native herbaceous and/or woody cover is at least eighty percent of the total cover, and native species diversity is at least fifty percent of the diversity originally found in the wetlands. If revegetation is not successful at the end of five years, Chehalis Power shall develop and implement (in consultation with a professional wetlands ecologist, EFSEC, WDFW and Ecology) a plan to actively revegetate the wetland with native wetland herbaceous and woody plant species.

(2) Upland Vegetation: Revegetation of upland areas that are currently vegetated with native species is considered successful (assuming no alterations by the underlying owner or utility easement holder) if the native herbaceous and/or woody cover is at least eighty percent of the total cover, and native species diversity is at least fifty percent of the diversity originally found in the uplands. Revegetation of upland areas that are currently vegetated with non-native species shall be done with like species at the direction of the underlying property owner.

c. For those restoration, creation or enhancement areas that do not meet the success standards provided in paragraph II.E.2.b. of this Agreement after five years, additional replacement shall be provided as follows: an amount of forested wetland equal to the unsuccessful portion of the restored forested wetland areas; and an amount of scrub/shrub or emergent wetland equal to the unsuccessful portion of the mitigation scrub/shrub or emergent wetland areas. Replacement of unsuccessful upland species shall be limited only to those areas that are currently in native species, and where the revegetated areas have not been altered in any way within the five year monitoring period by the underlying property owner.

d. Water Pipeline Alignment

Chehalis Power will, to the extent reasonable, revise as follows certain water pipeline alignments proposed in the Application.

(1) On Figure 2.14-3, stream crossing "D" will be moved approximately 800 feet upstream of its present location to avoid the interstate bridge and difficult stream crossing.

(2) On Figure 2.14-4, the pipeline will be rerouted to follow the City of Chehalis' water and sewer right-of-way Maurin Road, to move stream crossing "J" upstream of its present location and to avoid at the I-5 La Bree Road Overpass.

e. Water Pipeline Wetland Habitat Mitigation

(1) Wetland restoration, creation and enhancement shall not result in a net loss of wetland acreage and functions.

(2) In-kind replacement of functions and values is preferred.

(3) Where in-kind replacement is not reasonable, as determined by EFSEC in consultation with WDFW, substitute resources of equal or greater ecological value will be provided.

(4) For wetlands filled and lost, wetland acreage shall be replaced by creation at a 3-to-1 replacement ratio by wetland type (ratio to be doubled for enhancement of existing wetlands).

(5) For wetlands that are disturbed but not lost, the following shall apply:

(a) Forested Wetlands. Disturbance impacts to forested wetlands shall be mitigated by both: restoration of the disturbed area to either forested wetland or scrub/shrub wetland; and either replacement with other forested wetland (restoration or creation) in an amount equal to the disturbed area, or enhancement of disturbed emergent herbaceous wetland to forested wetland in amount equal to twice the disturbed area.

(b) Scrub/Shrub Wetlands. Disturbance impacts to scrub/shrub wetlands shall be mitigated by both: restoration of the disturbed area to scrub/shrub wetland; and either replacement with other scrub/shrub wetland (restoration or creation) in an amount equal to one-half the disturbed area, or enhancement of disturbed emergent wetland to scrub/shrub wetland in amount equal to the disturbed area.

(c) Emergent Wetlands. Disturbance impacts to emergent herbaceous wetlands shall be mitigated by restoration of the disturbed areas to native emergent herbaceous wetland, or to the same vegetation that existed prior to construction.

(6) Development of the wetland compensatory mitigation plan will be based on the format and checklists specified in Ecology Publication #94-29, Guidelines for Developing Freshwater Wetlands Mitigation Plans and Proposals.

f. Water Pipeline Upland Habitat Mitigation

(1) Forest Habitat

(a) For forest areas that are cleared and that cannot be restored to forest habitat, mitigation shall be by replacement of forest habitat (restoration or creation) in an amount equal to twice the unrestored forest area.

(b) For forest areas that are restored in place to forest habitat, mitigation shall be by restoration or creation of additional forest habitat in an amount equal to one-half the restored forest area.

(c) In either (1) or (2) above, planting of trees in formerly disturbed herbaceous sites (such as abandoned agricultural fields) shall qualify.

(2) Shrub Habitat

(a) For shrub areas that are cleared and that cannot be restored to shrub habitat, mitigation shall be by replacement of shrub habitat (restoration or creation) in an amount equal to twice the unrestored shrub area.

(b) For shrub areas that are restored in place to shrub habitat, mitigation shall be by restoration or creation of additional shrub habitat in an amount equal to one-half the restored shrub area.

(c) In either (1) or (2) above, planting of shrubs in formerly disturbed herbaceous sites (such as abandoned agricultural fields) shall qualify.

(3) Native Oak Forest

No native oak habitat is expected to be lost. However, in the event that any native oak habitat values are lost, Chehalis Power shall fund, design and implement an off-site oak restoration project in Lewis County. The specific location of any such oak enhancement efforts shall occur, where feasible, on public lands in Lewis County.

(4) Herbaceous Habitat

Disturbance to herbaceous habitat shall be mitigated by restoration of the disturbed areas in place with safeguards against weedy invasive species.

g. Management Plan

Chehalis Power shall develop a management plan that will assure the protection and enhancement of wildlife values on the lands that are acquired to replace lost wetland and upland wildlife habitat values. The management plan shall be fully implemented within five years of beginning operation of the Project. Chehalis Power shall provide a draft of the management plan to EFSEC in consultation with WDFW.

h. Further Mitigation for Generating Facility Site and Water Pipeline Impacts

To further mitigate the impacts caused by constructing the water pipelines, Chehalis Power shall provide \$30,000 (1995 dollars, adjusted by the applicable CPI) for the unfunded portion of phase two of the Lewis County Drainage District Dillenbaugh Creek fish and wildlife improvement project, or such other mitigation project mutually agreed upon by Chehalis Power and EFSEC in consultation with WDFW. To further mitigate the impacts caused by the loss of agricultural land on the generating facility site, Chehalis Power shall undertake a project or projects valued at \$40,000 (1995 dollars, adjusted by the applicable CPI) in funds, materials or services. The purpose of such project or projects shall be to implement fish and wildlife habitat improvements. Such improvements may include but are not limited to plantings designed to

conserve waters in local creeks and to lower water temperatures; work designed to return the creeks to their natural stream courses; and other restoration measures. Individual projects shall be subject to review and approval by Chehalis Power and shall be completed within two years of beginning facility construction, or within such time as mutually agreed upon by Chehalis Power and WDFW.

F. UNANTICIPATED IMPACTS

The Parties agree that the principles of impact assessment that shall be applied to all unanticipated impacts are, in descending order of importance, 1) avoid the impact wherever possible; 2) minimize the impact; 3) provide on-site, in-kind mitigation; and 4) provide off-site compensatory mitigation.

III. WITHDRAWAL OF OBJECTIONS

Based on the above commitments made by Chehalis Power, WDFW stipulates to the withdrawal, from the adjudicative hearing, of the issues identified on pages 7 to 9 in the Consolidated Issues List No. 3 dated August 25, 1995. WDFW specifically reserves the right to comment in EFSEC proceedings outside the adjudicative hearing; provided, however, that WDFW agrees not to oppose Chehalis Power's NPDES permit, and WDFW agrees not to oppose the water pipeline wetlands determinations and approvals issued by the U.S. Army Corps of Engineers.

DATED this 11<sup>th</sup> day of September, 1995.

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Elizabeth Thomas  
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